

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 04-10029-GAO

UNITED STATES OF AMERICA,

v.

DANIEL E. CARPENTER,
Defendant.

ORDER
May 8, 2012

O'TOOLE, D.J.

The defendant has moved to dismiss the indictment while the government's appeal is currently pending before the First Circuit Court of Appeals. Generally, the filing of an appeal transfers authority of the case from the trial court to the appellate court. U.S. v. Brooks, 145 F.3d 446, 455 (1st Cir. 1998). In some circumstances, jurisdiction may be shared between the courts for decisions on "peripheral or ancillary aspects of the case." Id. at 456.

The defendant contends that this court has jurisdiction to decide his motion to dismiss while the appeal is still pending. A dispositive motion is neither "peripheral" nor "ancillary" to the case. Without express authorization of the Court of Appeals, this court lacks jurisdiction. The defendant's Motion to Dismiss (dkt. no. 387) is denied.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge